

RULE 76D. APPEAL TO THE SUPERIOR COURT

This Rule applies only to appeals from District Court judgments which, by law, may be appealed to the Superior Court. It does not apply to direct appeals from the District Court to the Law Court. Such appeals are governed by the Maine Rules of Appellate Procedure.

Whenever a judgment of the District Court is by law reviewable by the Superior Court, an aggrieved party may appeal from a judgment of the District Court to the Superior Court in the county in which the division of the District Court entering judgment is located. The time within which an appeal may be taken shall be 30 days from the entry of the judgment appealed from, except that: (1) upon a showing of excusable neglect the court in any action may extend the time for filing the notice of appeal not exceeding 30 days from the expiration of the original time herein prescribed; and (2) if a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days of the date on which the first notice of appeal was filed, or within the time otherwise herein prescribed, whichever period last expires. The running of the time for appeal is terminated by a timely motion made pursuant to any of the rules hereinafter enumerated, and the full time for appeal fixed in this subdivision commences to run and is computed from the entry of any of the following orders made upon a timely motion under such rules: making findings of facts or conclusions of law as requested under Rule 52(a); or granting or denying a motion under Rule 52(b); or granting or denying a motion under Rule 59 to alter or amend the judgment; or denying a motion for a new trial under Rule 59. An appeal from a judgment, whenever taken, preserves for review any claim of error in the record including any claim of error in any of the orders specified in the preceding sentence, even if entered on a motion filed after the notice of appeal. The filing of a motion for any such order does not waive or otherwise render ineffective a previously filed notice of appeal from the same judgment if timely filed, and the time periods for taking any further steps to secure review of the judgment appealed from shall be measured from the date of the entry of such an order on a timely motion. An appeal shall not be dismissed because it is designated as being taken from such an order, but shall be treated as an appeal from the judgment. The appeal shall be taken by filing a notice of appeal with the clerk of the District Court. Rule 73(b) of these rules shall govern the form of the notice of appeal and notification of other parties. The notice of appeal is a pleading for the purposes of Rule 11.

The appeal shall be on questions of law only and shall be determined by the Superior Court without jury on the record on appeal specified in Rule 76F. Any findings of fact of the District Court shall not be set aside unless clearly erroneous.

Within the time for filing the notice of appeal the appellant shall pay to the clerk of the District Court the entry fee in and the cost of forwarding to the Superior Court the record on appeal specified in Rule 76F. The clerk of the District Court shall then forward the record to the Superior Court. The clerk of the Superior Court shall then promptly enter the appeal. If by accident or mistake the required payment is not made within the time prescribed, the court may, on motion of either party, allow the late payment of the required fees and direct the clerk to enter the appeal in the Superior Court; but attachment or bail shall not thereby be revived or continued.

An appeal may be dismissed by stipulation filed with the clerk, or, after entry in the Superior Court, with the clerk of the Superior Court.

If an appellant fails to comply with the provisions of Rules 76D through 76G within the time prescribed therein, the Superior Court may, on motion of any other party or on its own motion after notice to the parties, dismiss the appeal for want of prosecution.

The Superior Court may enter a judgment reversing or affirming, in whole or in part, the judgment appealed from and shall thereupon remand the case to the District Court from which it originated for entry of the appropriate judgment, or for any further proceedings. If the Superior Court remands the case for further proceedings, all issues raised on the appeal from the District Court shall be preserved in a subsequent appeal taken from a final judgment entered in the action.

Advisory Notes July 2003

This amendment, adding an initial paragraph to M.R. Civ. P. 76D, is to address continuing confusion which court clerk's offices are facing with unrepresented individuals seeking to file all appeals under Rule 76D because it is the only explicit appeal provision appearing in the Civil Rules. The cross-reference to the Maine Rules of Appellate Procedure may help in clarifying this matter.

Advisory Committee's Notes

January 1, 2001

P.L. 1999, Chapter 731, §§ ZZZ-2 *et seq.* unified the Superior Court and the District Court civil jurisdiction, with certain stated exceptions. 4 M.R.S.A. § 57 was amended to permit direct appeal to the Law Court from the District Court except in certain specified actions. Thus, a new introductory phrase “[w]henever a judgment of the District Court is by law reviewable by the Superior Court” is added to the first sentence of Rule 76D to make clear that the appeal from a judgment of the District Court to the Superior Court is available only in those actions by law reviewable in the Superior Court. All other District Court judgments are reviewable by the Law Court under amended 4 M.R.S.A. § 57.

Advisory Committee’s Notes June 2, 1997

Rule 76D is amended to clarify that an order of remand from the Superior Court to the District Court is not a final judgment from which an appeal lies, absent special circumstances. The amendment is not intended to change the law governing final judgments, moot issues or the preservation of issues for appeal. The amendment simply makes clear that in the ordinary case, an order of remand is not appealable and, to the extent that issues have been properly preserved throughout the course of the proceedings and are ripe for appeal when the remanded issues have been decided, the appeal from the final judgment preserves issues raised prior to the remand.

Advisory Committee’s Notes 1993

Rule 76D is amended by adding language to make clear that an appeal from the District Court to the Superior Court is entered by the Superior Court clerk only after payment of the fees by the appellant in the District Court and transmission of the record to the Superior Court by the District Court clerk.